OCT 15 1974
MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1974

Case No. 74-288

LOCAL 1426, INTERNATIONAL LONGSHOREMEN'S ASSOCIATION, AFL-CIO,

Petitioner,

v.

WILMINGTON SHIPPING COMPANY, HEIDE COMPANY, A Division of LUCKENBACH STEAMSHIP COMPANY, INC., INTERNATIONAL SHIPPING COMPANY and PALMETTO SHIPPING COMPANY OF NORTH CAROLINA,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

BRIEF FOR RESPONDENTS IN OPPOSITION

ALAN A. MARSHALL
and
DANIEL LEE BRAWLEY
Marshall, Williams, Gorham & Brawley
P.O. Box 1013
Wilmington, North Carolina 28401

J.W. ALEXANDER, JR.
Blakeney, Alexander & Machen
North Carolina National Bank Building
Charlotte, North Carolina 28202

JAMES B. SWAILS
Carr & Swails
P.O. Box 4
Wilmington, North Carolina 28401

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The opinion (preliminary injunction) of the District Court (App. A, *infra.*) and the opinion of the Court of Appeals for the Fourth Circuit (App. A of Petition) are unreported.

JURISDICTION

The judgment of the Court of Appeals for the Fourth Circuit was entered on June 19, 1974. The jurisdiction of this Court is invoked under 28 U.S.C. §1254(1) (1948).

QUESTION PRESENTED

Where the controlling contract contains a very broad "no strike" clause with a proviso recognizing the right of the employees not to cross a "bona fide" picket line, can the district court properly enter an injunction prohibiting a work stoppage and the honoring of a picket line pending arbitration of the admittedly arbitrable questions of whether the picket line was "bona fide" and whether the employees had to "cross" a picket line.

STATUTES INVOLVED

The pertinent provision of the Fair Labor Standards Act, 29 U.S.C. §104 (1932), is set forth in Appendix B of the Petition. The following provisions of the Labor Management Relations Act of 1947, are also pertinent.

Labor Management Relations Act of 1947, 29 U.S.C. §185(a) (1947), provides:

> "Suits for violation of contracts between an employer and a labor organization representing employees in an industry affecting commerce as defined in this chapter, or between any such labor organizations, may be brought in any district court of the United States having jurisdiction of the parties, without respect to the amount in controversy or without regard to the citizenship of the parties."

Labor Management Relations Act of 1947, 29 U.S.C. §173(d) (1947), provides in part:

> "Final adjustment by a method agreed upon by the parties is declared to be the desirable method for settlement of grievance disputes arising over the application or interpretation of an existing collective-bargaining agreement. . ."

STATEMENT OF THE CASE[1]

The Respondents are corporations, or divisions thereof, engaged in the shipping agency business at the North Carolina State

[1]Appropriate references to the record are omitted since the Petitioner did not request that the record be certified to the Supreme Court.

Ports Authority, Wilmington, North Carolina. In the course of their business activities, the Respondents provide stevedoring services for vessels calling on the Port of Wilmington.

The Petitioner is an unincorporated labor organization or "Union", and represents longshore-employees of the Respondents in collective bargaining with industries affecting commerce within the meaning of Section 501 of the Labor Management Relations Act of 1947, 29 U.S.C. §142 (1947). On October 1, 1971, the Respondents and the Petitioner, among others, entered into a labor contract establishing all of the wages, hours and conditions of work for said employees. That contract is more commonly known as the "South Atlantic Longshore Labor Agreement" and was, at all material times, in full force and effect.

Clause 15(B) of the contract provides, in part:

> "Matters under dispute which cannot be promptly settled between the local and an individual employer shall no later than 48 hours after such discussions, be referred in writing covering the entire grievance to a Port Grievance Committee. . ."

Clause 15(A) of that contract provides, in part:

> "During the term of this Agreement, the Employer agrees that there shall be no lockouts of the members of the Union and the Union agrees there shall not be any strike of any kind or degree whatsoever, walkout, suspension of work, curtailment or limitation of production, slowdown, or any other interference or stoppage, total or partial, of the Em ployer's operation for any cause whatsoever; such causes including but not limited to, unfair labor practices by the Employer or violation of this Agreement. The right of employees not to cross a bona fide picket line is recognized by the Employer. . ."

On September 6, 1973, warehousemen employed by the North Carolina State Ports Authority stopped work after demanding a wage increase and being refused. On September 7, 1973, the warehousemen appeared at the North Carolina Ports Authority facility refusing to work and carrying placards saying, "No Contract, No Work". On that same day, Judge L. Bradford Tillery,

Superior Court Judge of the State of North Carolina, enjoined and restrained said warehouse employees from interferring with, obstructing or attempting to disrupt or obstruct the normal operations of the Ports Authority, from continuing to engage in a strike, from interferring with the ingress or egress of vehicles or persons from the Ports Authority, from using violent or threatening language at or towards any person entering, on or leaving the Ports Authority, and from counseling, procuring, commanding or aiding any persons to do any of the aforementioned acts.

When the Respondents' longshore-employees, members of the Petitioner union, came to work on September 7, 1973, they refused to work contending that the warehousemen constituted a "bona fide picket line" which they had the right to refuse to cross. The Respondents contended that the longshore-employees were not required to cross a picket line in order to work and that there was no "bona fide picket line" within the purview of the contract. Extended discussions between representatives of the Respondents, the Petitioner, President of the International Longshoremen's Association and counsel for the International Longshoremen's Association did not resolve the dispute. The Respondents and the Petitioner did, however, agree that the existing dispute was subject to the arbitration procedure set forth in the contract, but the work stoppage continued. Therefore, Respondents instituted this action, in the United States District Court, Eastern District of North Carolina, seeking, inter alia, a temporary restraining order and preliminary injunction directing the Petitioner, its officers, agents, representatives and members, to cancel the strike or work stoppage and to cease refusing to perform longshore work for the Respondents. On September 12, 1973, the District Court entered a temporary restraining Order restraining the Petitioner, its officers, agents, representatives and members "from engaging in any strike or work stoppage" and directing them "to cease refusing to perform longshore work for the [Respondents]" and "to specifically perform the arbitration agreement set forth in the contract". Notwithstanding the temporary restraining Order, the Petitioner's members continued their work stoppage and refused to perform the Respondents' longshore work. On September 14, 1973, the District Court

found the Petitioner, its officers, agents, representatives and members in contempt of court and imposed a civil fine. Thereafter, the order to show cause on the Respondents' Motion for a preliminary injunction came on for hearing before the Honorable J. Braxton Craven, Jr., United States Circuit Judge, sitting as a District Judge by Designation, on September 21, 1973 and, upon conclusion of that hearing, Judge Craven entered a preliminary injunction Order which continued in effect the temporary restraining Order. The Petitioner's motion to stay the preliminary injunction was denied by Judge Craven on September 28, 1973 and the Petitioner filed notice of appeal from the preliminary injunction Order on October 19, 1973.

Pending appeal, and pursuant to the parties agreement and the Order of the District Court, the disputes (whether warehousemen constituted a "bona fide picket line" within the purview of the labor contract, and whether the members of the Petitioner were required to "cross" the picket line in order to work) were submitted to arbitration on February 13, 1974. The arbitrator found that, after the picket line was removed from the Ports Authority property (which occurred prior to the institution of this action), the picket line was *not* bona fide and the longshoremen were *not* required to cross the picket line in order to work.

By Judgment entered June 19, 1974, the Court of Appeals for the Fourth Circuit affirmed the District Court's granting of the preliminary injunction and the imposition of the civil contempt fine upon the Petitioner.

ARGUMENT I

The Decision Below Is Clearly Correct

Traditionally, collective bargaining contracts establish grievance and arbitration machinery for the purpose of peacefully resolving industrial disputes. Parties to said contracts are not permitted to bypass the arbitration machinery by taking self help or unilateral action in the form of strikes or work stoppages. This fact is not only inherent in an agreement to arbitrate but is further reinforced by the express provision in many contracts of an express "no strike" clause prohibiting any work stoppages pending an outcome of arbitration.

The collective bargaining agreement between the parties in the instant case expressly requires binding arbitration. The Petitioner has not denied that the instant controversy is appropriate for arbitration. In fact, it has readily agreed, and contended for arbitration of the dispute, and the grievance and arbitration machinery has been completed and the award of the arbitratory has been rendered.

It is a matter of fundamental equity, common sense and logic that the integrity of the arbitration process cannot be maintained, that is, the controversy cannot be peacefully determined, if the union is allowed to strike at the same time it arbitrates. A strike action is the very antithesis of arbitration. The very reason for the parties' agreement to arbitrate was to avoid the devastating and tragic consequences strikes impose on everyone concerned—not only the parties directly involved but the public as well.

This contract between these parties contains a "no strike" clause, which is the ***quid pro quo*** of the provision for binding arbitration. Therefore, in the instant case, the Petitioner, while recognizing the dispute to be arbitrable under the grievance and arbitration provisions of this agreement with the Respondents, continued to engage in a strike or work stoppage. Such action contravenes the purpose of binding arbitration,— i.e., peaceful settlement of industrial disputes. Such a strike or work stoppage must be prohibited and the "no strike" clause specifically enforced in order to continue the validity and purpose of binding arbitration.

In ***Boys Market v. Retail Clerks Union***, 398 U.S. 235 (1970) the Supreme Court affirmed these basic principles of federal labor relation law and determined that injunctions should issue in cases such as here presented.

Speaking through Justice Brennan, the Supreme Court determined at the outset that its previous decision in ***Sinclair Refining Co. v. Atkinson***, 370 U.S. 195 (1962), holding that the anti-injunction provisions of the Norris-La Guardia Act precluded a federal district court from enjoining a strike in breach of a "no strike" obligation contained in a collective bargaining agreement, was erroneously decided. The Court noted the strong congres-

sional and judicial policies favoring the use of arbitration procedures for the expeditious settlement of industrial disputes and reaffirmed its earlier position that a "no strike" obligation, express or implied, is the ***quid pro quo*** for an undertaking by the Employer to accept arbitration. The Court further noted that the incentive for inclusion of a specifically enforceable arbitration mechanism was dissipated if injunction was not available to enforce the "no strike" obligation:

> "An additional reason for not resolving the existing dilemma by extending Sinclair to the States is the devastating implications for the enforceability of arbitration agreements and their accompanying no-strike obligations if equitable remedies were not available. As we have previously indicated, a no-strike obligation, express or implied, is the quid pro quo for an undertaking by the employer to submit grievance disputes to the process of arbitration. See ***Textile Workers Union v. Lincoln Mills, supra***, at 455, 1 L Ed 2d at 980. Any incentive for employers to enter into such an arrangement is necessarily dissipated if the principal and most expeditious method by which the no-strike obligation can be enforced is eliminated. While it is of course true, as respondent contends, that other avenues of redress, such as an action for damages, would remain open to an aggrieved employer, an award of damages after a dispute has been settled is no substitute for an immediate halt to an illegal strike. Furthermore, an action for damages prosecuted during or after a labor dispute would only tend to aggravate industrial strife and delay an early resolution of the difficulties between employer and union.
>
> "Even if management is not encouraged by the unavailability of the injunction remedy to resist arbitration agreements, the fact remains that the effectiveness of such agreements would be greatly reduced if injunctive relief were withheld. Indeed, the very purpose of arbitration procedures is to provide a mechanism for the expeditious settlement of industrial disputes without resort to strikes, lockouts, or other self-help measures. This basic purpose is ob-

viously largely undercut if there is no immediate, effective remedy for those very tactics that arbitration is designed to obviate. Thus, because Sinclair, in the aftermath of Avco, casts serious doubt upon the effective enforcement of a vital element of stable labor-management relations—arbitration agreements with their attendant no-strike obligations—we conclude that Sinclair does not make a viable contribution to federal labor policy."

Boys Market v. Retail Clerks Union, supra, at pp. 247-249.

The federal policy expressed in *Boys Market* favoring resolution of labor disputes through the peaceful mechanism of arbitration has Congressional support as evidenced by the Labor Management Relations Act of 1947, 29 U.S.C. §173(d) (1947):

"Final adjustment by a method agreed upon by the parties is declared to be the desirable method for settlement of grievance disputes arising over the application or interpretation of an existing collective-bargaining agreement. . ."

The continuing vitality of that federal policy was recognized recently in *Gateway Coal Co. v. United Mine Workers of America,* 414 U.S. 368 (1974).

In the present action the decisions of the District Court and the Fourth Circuit Court of Appeals are responsive to and reflect the strong federal policies expressed in *Boys Market* and *Gateway Coal Co.* and consistent with Congressional dictates such as found in the Labor Management Relations Act of 1947, 29 U.S.C. §173(d) (1947).

ARGUMENT II

There Is No Conflict Of Decisions

The Petitioner, as its sole reason for granting a writ of certiorari, contends that the Fourth Circuit's decision in *Monongahela Power Co. v. Local No. 2332, International Brotherhood of Electrical Workers, AFL-CIO-CLC,* 484 F. 2d 1209 (4th Cir. 1973) is in conflict with the Fifth Circuit's decision in *Amstar Corp. v. Amalgamated Meat Cutters & Butcher Workmen of North*

America, AFL-CIO, 468 F. 2d 1372 (5th Cir. 1972) and inconsistent with the Third Circuit's decision in ***NAPA Pittsburgh, Inc. v. Automotive Chauffers, Parts and Garage Employees,*** Local 926, _____ F. 2d _____, 87 L.R.R.M. 2044 (3rd Cir. August 8, 1974). The Petition does not suggest or argue that the decision in the case at bar is inconsistent or in conflict with those decisions of the Third and Fifth Circuit. The obvious reason that Petitioner limits his reasoning to the ***Monongahela*** case is that the case at bar is not in conflict or inconsistent with ***NAPA*** or ***Amstar*** or any other federal court decision.

In ***NAPA Pittsburgh, Inc. v. Automotive Chauffers, Parts and Garage Employees, Local 926, supra***, the union refused to cross a picket line established at NAPA Pittsburgh, Inc.'s plant by a second union which was endeavoring to represent employees of NAPA Altoona, Inc. The labor contract between NAPA Pittsburgh, Inc. and the union provided:

> "It shall not be a violation of this agreement. . . in the event an employee refuses to enter upon any property involved in a primary labor dispute or refuses to go through or work behind any primary picket lines . . . at the Employer's (NAPA Pittsburgh's) place or places of business."
>
> ***Napa Pittsburgh, Inc. v. Automotive Chauffers, Parts and Garage Employees, Local 926, supra.***

The employer and the union disagreed as to whether the picket line involved in the case was "primary." The District Court found ***Boys Market v. Retail Clerks Union, supra***, to be applicable, issued an injunction and ordered the parties to arbitrate the question of whether or not the picket line was "primary." From that order the union appealed. The Third Circuit Court of Appeals, sitting ***en banc***, held that the issue of whether the picket line was primary or secondary was arbitrable and that, pending resolution of that issued, the union was properly enjoined.

The ***NAPA*** decision and the case at bar are factually indistinguishable and the results obtained are totally consistent and without conflict. In both cases the union sought to refuse to cross a picket line of a second union; both labor contracts restrict this right (in ***NAPA*** the right was limited to "primary"

picket lines and in the case at bar the right was limited to "bona fide" picket lines); and in both cases the status of the picket line was an arbitrable dispute under the labor contract.

In ***Amstar Corp. v. Amalgamated Meat Cutters & Butcher Workmen of North America, supra,*** Amstar's union employees refused to cross a sister union's picket line established at Amstar's Chalmette refinery. The labor contract did not contain any provision restricting the union's right to honor picket lines. The Fifth Circuit Court of Appeals reversed the District Court's granting of a preliminary injunction. As pointed out by Judge Weis in ***NAPA***, ***Amstar*** is clearly distinguishable. The labor contract involved in ***Amstar*** did not contain a contractual provision restricting the union's right to honor picket lines. However, the contracts in both ***NAPA*** and the present case do contain such a restricting clause and, therefore, ***NAPA*** and this action are factually distinguishable.

There being no conflict between the Fourth Circuit's decision below and the decisions of the other circuits, the Petitioner's sole reason for granting the writ is untenable.

CONCLUSION

For the reasons set forth above it is respectfully submitted that the Petition for a Writ of Certiorari should be denied.

Respectfully submitted,

Alan A. Marshall and
Daniel Lee Brawley
Marshall, Williams, Gorham & Brawley
Post Office Box 1013
Wilmington, North Carolina 28401

J. W. Alexander, Jr.
Blakeney, Alexander & Machen
North Carolina National Bank Building
Charlotte, North Carolina 28202

James B. Swails
Carr & Swails
Post Office Box 4
Wilmington, North Carolina 28401

APPENDIX A

OPINION OF THE DISTRICT COURT
(Preliminary Injunction)
UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NORTH CAROLINA
WILMINGTON DIVISION

FILED – September 21, 1973
John R. Whitty, Clerk
U. S. District Court
E. Dist. No. Car.

Wilmington Shipping Company Heide Company International Shipping Co. Palmetto Shipping Co. Of N. C.	Civil 1667 – Wilmington Division
-v-	
International Longshoremen's Association, Local 1426	Hearing, September 21, 1973 At Wilmington

This is a motion for a preliminary injunction, made returnable before me at Wilmington by Order of Judge Dupree, and fully heard today.

The origin of this labor dispute which has temporarily, and intolerably for the people of North Carolina, closed the port of Wilmington is found in International Longshoremen's Association against North Carolina Ports Authority, 463 F.2d 1 (Fourth Circuit 1972). In that case the Fourth Circuit, in an opinion by Judge Bryan, held that the North Carolina State Ports Authority was a "carrier" within the meaning of the Federal Statute so as to bring the Ports Authority within the jurisdiction of the National Mediation Board, which Board had certified ILA to be the representative of the Ports Authority's employees. The case was remanded to the District Court for adjudication of other questions, including by implication, the question of whether the Federal Statute prevailed over the provisions of N. C. Gen. Stat.

95-98 which purports to forbid any agency of the State from entering into any agreement with a labor union. I am advised by counsel that subsequent to remand the Ports Authority has refused to negotiate with ILA or with its employees, and that the case remains pending and the questions have not yet been adjudicated. This is the festering sore that has brought on the present dispute before me. I respectfully request that the Chief Judge of the District expedite the resolution of the Ports Authority dispute, for it is inseparable as a practical matter (although quite separate legally) from the final resolution of the dispute in this case.

Some few weeks ago members of the ILA began to honor a picket line interposed by employees of the North Carolina Ports Authority, and presently continue to do so. On September 12, 1973, Judge Dupree entered a temporary restraining order against Local 1425 and its officers, agents, representatives and members, requiring that they cease refusing to perform longshore work for the plaintiffs.

With respect to the issuance of a preliminary injunction I find the pertinent facts to be as follows:

1. The contract between plaintiffs and the Local clearly provides, in words of the broadest import, that there shall not be any kind of strike, walkout, suspension of work, or work stoppage for any cause whatever.

2. The contract further provides that the employees have the right to honor and refuse to cross a bona fide picket line.

3. Since Spetember 11, 1973, the parties have disagreed as to whether or not the picket line at the North Carolina Ports Authority is a "bona fide picket line."

4. The parties have further agreed that this is an arbitrable question and that the contract compels arbitration of it.

5. Pursuant to their mutual understanding, the parties have now completed the first stage of the arbitration and are about to undertake the second procedure in processing the dispute or grievance.

6. I am convinced by the evidence that damage to the plaintiffs and to the port of Wilmington and to the public

interest is irreparable and that there is no adequate remedy at law.

7. The question of whether the picket line is a bona fide one is, under the contract, for decision by arbitration and not by this Court.

8. The plaintiffs and the public interest will suffer more from the denial of injunction than will the Union and its employees from its issuance.

In my opinion the issuance of an injunction comes within the ***Boys Markets*** exception to the anti-injunction provision of the Norris-LaGuardia Act: (1) the collective bargaining agreement contains a mandatory arbitration procedure; (2) the work stoppage is over a grievance (whether these is a bona fide picket line) which both parties are contractually bound to arbitrate; (3) both the employer and the Union agree that the issue is arbitrable and have begun the arbitration procedure; (4) the issuance of an injunction is warrantable under ordinary principles of equity.

NOW, THEREFORE, IT IS ORDERED, ADJUDGED AND DECREED that the temporary restraining Order entered by Judge Dupree on September 12, 1973 is continued in effect and now becomes the Court's preliminary injunction pending trial on the merits, or until decision of the arbitrator and subsequent implementing Order of the Court, and the provisions of said order are adopted verbatim as fully and completely as if set out herein.

This 21st day of September, 1973, at 1 o'clock p.m.

J. BRAXTON CRAVEN, JR.
UNITED STATES
FOURTH CIRCUIT JUDGE*

*By Designation sitting as a District Judge in the Eastern District of North Carolina.